

**Sunsets 1/1/2016**

**48-2c-1806 Determination and authorization of indemnification.**

- (1) A company may not indemnify a manager under Section 48-2c-1802 unless authorized and a determination has been made in the specific case that indemnification of the manager is permissible in the circumstances because the manager has met the applicable standard of conduct set forth in Section 48-2c-1802. A company may not advance expenses to a manager under Section 48-2c-1804 unless authorized in the specific case after the written affirmation and undertaking required by Subsections 48-2c-1804(1)(a) and (b) are received and the determination required by Subsection 48-2c-1804(1)(c) has been made.
- (2) The determinations required by Subsection (1) shall be made:
  - (a) by the managers by a majority vote and only those managers not parties to the proceeding shall be counted;
  - (b) by special legal counsel selected by a majority vote of the managers of the company who are not parties to the proceeding or, if none, by members holding a majority interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding; or
  - (c) by the members holding more than 50% interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding.
- (3) Unless authorization is required by the operating agreement, authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible. However, if the determination that indemnification or advance of expenses is permissible is made by special legal counsel, authorization of indemnification and advance of expenses shall be made by those entitled under Subsection (2)(b) to select legal counsel.